(3)

IN THE HIGH COURT OF JUDICATURE AT,BILASPUR,CHHATTISGARH.

CRIMINAL APPEAL NO-41-OF2002.

APPELICANT:-
(IN JAIL)

1. Prabhu Ram Son of Ramdhan,Age 20 Year's,Occpation-Agriculture,Cast Rajware,
2. Maeeyibai wife of LateRoihedas,Age 35 Year's,Occpation-Agriculture, Cast Rajware,
3. Davesharen Son of Rajenandan,Age 22 Year's, Occpation-Agriculure, Cast Rajware,

allResedent VillagePanchyat Jodhpure, P.S.-Lakhanpure,Distt.Surguja(C.G.).

(1-18)
Filed on 8-1-02
by Shri V.K. Panchuj Advocate
See R. to DR 5?

VERSUS

RESPONDENT:- State of Chhattisgarh.

CRIMINAL APPEAL UNDER SECTION 374 OF CRIMINAL PROCEDURE CODE.

(49)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 41/2002

Prabho Ram and two others

Vs.

State of Chhattisgarh

Post for Judgment: 03 .10.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 41/2002

Before: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Prabho Ram and two others.

Vs.

State of Chhattisgarh

Present:
Shri H.S.Ahluwalia, learned Counsel for the appellant No.1.
Shri Vivek Pandey, learned Counsel for the appellants No.2 & 3.
Shri Ravindra Agrawal, Panel Lawyer for the State.

J U D G M E N T

(Delivered on this 3rd day of October, 2006)

This appeal is directed against the judgment dated 15.12.2001 delivered by Shri T.R.Burman, 1st Additional Sessions Judge, Ambikapur, Ambikapur, Dist. Surguja in Sessions Case No. 269/2001 whereby the appellants were convicted under Sections 344 and 366 of the I.P.C. and sentenced to rigorous imprisonment for three years and a fine of Rs.500/- and in default to additional R.I. for six months under Section 344 I.P.C. and to rigorous imprisonment for seven years and a fine of Rs.500/- and in default to additional R.I. for six months under Section 366 I.P.C. In addition, appellants Prabho Ram and Dev Sharan were also convicted under Section 376 (2) (g) I.P.C. and sentenced to rigorous imprisonment for 10 years and a fine of Rs.1000/- and in default to undergo additional R.I. for one year.

2. Admittedly the prosecutrix aged about 20 years is the daughter of Mansai P.W.3 and Shyampati P.W.4 and sister of Ramsai P.W.2.

3. Briefly stated the prosecution case is that on 28.05.2001 appellant Maiya Bai came to the house of the prosecutrix and asked for *Gudakhu.* When the prosecutrix came out, Maiya Bai dragged her to her house. Appellant Prabho Ram was already present there. The prosecutrix was kept in confinement under threats in the house of Maiya Bai for three days, during which period, Prabho Ram committed rape on her. Thereafter, Prabho took the prosecutrix to his house and keeping her in confinement committed rape on her for four days. After that, the appellant Prabho Ram took the prosecutrix to the house of Dev Sharan and kept her in wrongful confinement for two days and committed rape on her. Thereafter, at night when appellant Prabho Ram and Dev Sharan were taking the prosecutrix to another place, Ramsai P.W.2 saw them and caught hold of the prosecutrix and brought her home.

4. F.I.R. was lodged two days thereafter on 08.06.2001 vide Ex.P.1 in Police Station Lakhanpur by the prosecutrix. On medical examination, Dr. Smt. Asha Bansal P.W. 5 found that the prosecutrix was menstruating. There were no external injuries on her person. A small abrasion was present over inner side of Labia with inflammation and tenderness. No internal trauma to the vagina was found. It was opined that the prosecutrix was habituated to sexual intercourse. Vaginal slides of the prosecutrix and one green petticoat having semen like stains which were seized from her vide Ex.P.3 were sent for chemical analysis. Vide report Ex.P.19, presence of semen and human

spermatozoa on the vaginal slides and petticoat was confirmed. After completion of investigation, the appellants were prosecuted.

5. The appellants abjured their guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as eight witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellants as aforesaid in paragraph 1.

6. Shri H.S. Ahluwalia and Shri Vivek Pandey, learned counsel for the appellants contended that the testimony of the prosecutrix was wholly unrealiable since Ramsai P.W.2, Mansai P.W.3 and Shyampati P.W.4 did not corroborate the prosecutrix that she had told them about any sexual intercourse having been committed with her by Prabho Ram. Her testimony was riddled with major contradictions and conviction of the appellants was liable to be set aside. On the other hand, Shri Ravindra Agrawal, learned Panel Lawyer argued in support of the impugned judgment.

7. Having considered rival submissions, I have perused the record of Sessions Case No. 269/2001. The testimony of the prosecutrix P.W.1 that she was kept in wrongful confinement for three days inside the house of Maiya Bai, thereafter for four days inside the house of Prabho Ram and after that for two days inside the house of Dev Sharan and during all this period, appellant-Prabho Ram was committing rape on her is wholly unworthy of any credit. In paragraph 9, she admitted that Maiya Bai had not dragged her to her house. She also admitted that she had not narrated about the commission of rape on her by the appellant-Prabho Ram inside the house to Maiya Bai.

The prosecutrix further admitted in paragraph 9 that she had gone voluntarily from the house of Maiya Bai with the appellant Prabho Ram. In paragraph 11, she admitted that 5 to 6 neighbouring houses were present near the house of Maiya Bai and had she shouted her cries would have been heard. The prosecutrix also admitted in paragraph 11 that the appellant-Dev Sharan was not present at the house of Maiya Bai and further admitted in paragraph 6 that Dev Sharan did not commit any rape on her. She admitted in paragraph 12 that Dev Sharan was not willing to take her and Prabho inside his house and she did not narrate to Dev Sharan that Maiya and Prabho Ram had forcibly brought her to his house. She admitted the presence of the parents of the Dev Sharan inside his house and stated that she did not narrate anything to them. The testimony of Ram Sai P.W.2, brother of the prosecutrix, clearly shows that while Maiya Bai and the prosecutrix were running away, he had caught hold of his sister who did not narrate about any rape having been committed on her by Prabho. Parents of the prosecutrix i.e. Mansai P.W.3 and Shyampati P.W.4 also did not state that the prosecutrix had narrated to them that the appellant-Prabho had committed rape on her. Mansai P.W.3 also admitted that no missing person report was lodged by him during seven to eight days when the prosecutrix was missing because the prosecutrix was habituated to leave the house for 2 to 3 days. To a direct question, he did not deny that the prosecutrix had illicit relationship with appellant-Prabho. Shyampati P.W.4 also stated that the prosecutrix did not tell her about any rape having been committed on her by appellant-Prabho. The testimony of the parents and the brother of the prosecutrix clearly render the testimony of the prosecutrix unworthy of any credit.

8. It is also noteworthy that even after being caught by her brother-Ramsai P.W.2 while she was fleeing with Maiya Bai, the prosecutrix did not lodge report for a period of two days. The testimony of Dr. Smt. Asha Bansal P.W.5 also clearly shows that there were no signs of trauma in the vagina of prosecutrix who was habitual of sexual intercourse. No external injuries were found on the person of the prosecutrix. Mansai P.W.3 admitted in paragraph 5 that the house of Maiya Bai is situated in front of his house across the road. The prosecutrix admitted in paragraph 9 that she did not raise any alarm while she was being taken by Prabho from the house of Maiya to his house. She also stated that she did not inform the other family members of Maiya that the appellant Prabho Ram was committing rape on her.

9. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the testimony of the prosecutrix is wholly unreliable and clearly spells out consent in the sexual act, if any, committed by Prabho Ram with her. So far as the appellant-Dev Sharan is concerned, there is no evidence on record to show that he, in any manner, wrongfully confined the prosecutrix in his house and, in any manner, assisted in the rape committed on prosecutrix by the appellant-Prabho Ram. The testimony of the prosecutrix does not rule out the possibility that she voluntarily accompanied Maiya Bai to her house and went with the appellant-Prabho from one place to another and indulged in sex with him. In this manner, conviction of the appellants-Prabho Ram and Dev Sharan under Sections 344, 366 and 376 (2) (g) of the I.P.C. and the conviction of Maiya Bai under Section 344 and 366 of the I.P.C. and the sentences awarded thereunder are liable to be set aside.

10. In the result, the appeal is allowed. Conviction of the appellants-Prabho Ram and Dev Sharan under Sections 344, 366 and 376 (2) (g) of the I.P.C. and the conviction of Maiya Bai under Section 344 and 366 of the I.P.C. and the sentences awarded thereunder are set aside. The appellants are acquitted. The appellant No.1-Prabho Ram shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the appellants.

Sd/-
Dilip Raosaheb Deshmukh
Judge